Jurisdictional Statement

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81-268

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No.

RAYMOND P. SCOTT, ET AL,
Appellants,

versus

WOODROW W. "WOODY" DUMAS, ET AL,
Appellees.

On Appeal from the Supreme Court of the State of Louisiana

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QUESTION PRESENTED

Appellants are a group of individual businessmen and residents along what is one of the historic streets, East Boulevard, in Baton Rouge, Louisiana. The respondents are the members of the City and Parish Councils of the City of Baton Rouge and Parish of East Baton Rouge, State of Louisiana, and the Director of Public Works of the City-Parish, made defendants herein in their official capacity. On February 27, 1980, the City and Parish Councils passed two ordinances which renamed portions of a continuous street known as East Boulevard and a portion known as Texas Street, "Thomas H. Delpit Drive." Appellants filed suit in the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana, to enjoin the city from effectuating the change in the street name "East Boulevard." The District Court held that the ordinances were null, void and of no legal effect since enacted for purely political purposes and therefore beyond the scope of authority of the Councils under the Plan of Government of the Parish of East Baton Rouge and the City of Baton Rouge, Chapter 3, Sec. 3.01(B). The First Circuit Court of Appeal, State of Louisiana, reversed and declared the ordinances a valid exercise of the Councils' authority. The Supreme Court of Louisiana denied timely application for a writ of certiorari by appellants with two justices dissenting. This Court rejected a motion to stay the implementation of the name change pending appeal or application for certiorari, per Justice Powell on May 12, 1981. The State Courts below which reached the merits of this case rejected petitioners' contention throughout the litigation that the ordinances violated appellants' guarantees of Due Process and Equal Protection provided in Section 1 of the 14th Amendment to the United States Constitution

and that the ordinances violated appellants' rights protected by the 14th Amendment to the United States Constitution.

Accordingly, the question presented:
Did not the State Courts below err in failing to hold that Baton Rouge City Council Ordinance No. 4209 and East Baton Rouge Parish Council Ordinance No. 5475 which changed the name of the street known as East Boulevard in the City of Baton Rouge for purely political purposes to Thomas H. Delpit Drive are null, void, and of no legal effect because the said ordinances deprived the appellants of their liberty and property without Due Process and violated the right of the appellants to equal protection of the law as guaranteed by Section 1 of the 14th Amendment to the United States Constitution?

LIST OF PARTIES

The following were parties to the proceedings below:

RAYMOND P. SCOTT,
LEWIS A. BONFANTI,
REV. ROBERT D. THOMAS,
VINCENT S. DIMATTIA,
ROBERT PARKER,
ALTON E. INGRAM,
CHARLES McCUE, JR.,
HERBERT WILLIAMS,
CHARLES N. SCOTT,
MABLE C. SCOTT,
EDWARD L. DAIGNE,
RICHARD NELSON,
THEODIS WHITE,
MRS. THEODIS WHITE,
MRS. VERA L. SCOTT,
REV. FRANK R. WILDER,
REV. EMANUEL McFIELDS and
MRS. LEOLA M. YOUNG
Plaintiffs

Versus

WOODROW W. "WOODY" DUMAS, MAYOR-PRESIDENT,
GEORGE R. DABBS, PRESIDENT-PRO-TEMPORE,
JOHNNY DYKES,
CARL CRANE,
PEARL GEORGE,
HOWARD MARSELLUS,
TOMMY NECK,
DR. C. P. "TONY" CURRIER,
EDGAR WATTS,
EARL DAY,
EARL HARRISON,
JEWEL J. NEWMAN and
MICHAEL G. ROUBIQUE
all in their official capacity as Mayor-President of the City of Baton Rouge, Parish of East Baton Rouge, and as members of the City-Parish Council of the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, and Ray W. Burgess as Director of the City-Parish Department of Public Works.

Defendants

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IN THE

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October Term, 1981

No.

RAYMOND P. SCOTT, ET AL,
Appellants,

versus

WOODROW W. "WOODY" DUMAS, ET AL,
Appellees.

On Appeal from the Supreme Court of the State of Louisiana

Raymond P. Scott, et al, respectfully petition to appeal to this Court for review of the denial of writs by the Supreme Court of the State of Louisiana to the First Circuit Court of Appeal of the State of Louisiana.

OPINIONS BELOW

The original opinion of the State District Court is reprinted in Appendix B-1.

The opinion of the First Circuit Court of Appeal of the State of Louisiana is reported at 396 So. 2d 378 and reprinted in Appendix A-2.

The denial for writ of certiorari by the Louisiana Supreme Court is reported at ____ So. 2d____ (1981) and reprinted in Appendix A-1.

JURISDICTION

This case involves the constitutionality of a state law. The Supreme Court of the State of Louisiana on April 27, 1981, denied writs to the First Circuit Court of Appeals of the State of Louisiana which had held valid two local ordinances. (Appendix A-1). This Court has jurisdiction pursuant to 28 U.S.C. § 1257(2). The notice of appeal was filed with the Louisiana Supreme Court and the First Circuit Court of Appeals, State of Louisiana, on July 20, 1981.

STATUTORY PROVISIONS INVOLVED

1. United States Constitution, 14th Amendment, Section 1: " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. State of Louisiana, Baton Rouge City Ordinance No. 4209 and East Baton Rouge Parish Ordinance No. 5475:

"CHANGING THE NAME OF EAST BOULEVARD FROM MYRTLE STREET TO EAST WASHINGTON STREET, AND TEXAS STREET, FROM EAST WASHINGTON STREET TO EAST ROOSEVELT STREET, TO 'THOMAS H. DELPIT DRIVE.' "

WHEREAS, a request has been made that the name of East Boulevard, from Myrtle Street to East Washington Street, and Texas Street, from East Washington Street to East Roosevelt Street, be changed to "Thomas Henry Delpit Boulevard"; and

WHEREAS, the Planning Commission, in considering this matter, advertised and held a public hearing at which no one appeared in opposition to the proposed change; and

WHEREAS, the Planning Commission has no objection to the name change except that the name as proposed would be too long for the regulation street signs, and has recommended that it be changed to "Thomas H. Delpit Drive"; and

WHEREAS, it appears in the public interest that such change of name be effected, and these Councils concur in the recommendation of the Planning Commission:

NOW, THEREFORE, BE IT ORDAINED by the Parish Council of the Parish of East Baton Rouge and the City of Baton Rouge:

Section 1. That the name of East Boulevard, from Myrtle Street to East Washington Street, and Texas Street, from East Washington Street to East Roosevelt Street, within the Parish of East Baton Rouge be changed to "Thomas H. Delpit Drive."

Section 2. That a copy of this ordinance be forwarded to the Clerk and Recorder of the Parish of East Baton Rouge for recordation in the Conveyance Records of said office."

STATEMENT OF THE CASE

This case presents a challenge to the constitutional validity of two ordinances enacted by the City Council of the City of Baton Rouge and the Parish Council of East Baton Rouge Parish, State of Louisiana, which renamed a portion of an historic street, East Boulvard, in the City of Baton Rouge, "Thomas H. Delpit Drive."

For over seventy-five years the name "East Boulevard," a street of truly historical significance in the City of Baton Rouge, has been well known to the citizenry of Baton Rouge and surrounding areas. The street made up part of the eastern boundary of the original city limits of this southern capital city, which boundaries were North Boulevard, East Boulevard South Boulevard and the Mississippi River. Moreover, the particular section of East Boulevard affected by this name change passes through one of the foremost black business and residential communities in Baton Rouge. The name East Boulevard is a source of pride to that community and is closely connected to the progress of its residents.

On February 27, 1980, the City-Parish Council of the City of Baton Rouge and the Parish of East Baton Rouge enacted Parish Ordinance No. 5475 and City Ordinance No. 4290 renaming a portion of East Boulevard and a portion of Texas Street in the city Thomas H. Delpit Drive. The ordinances were vigorously objected to by abutting property owners and businessmen along that portion of the street known as East Boulevard. As a result of this action by the City and Parish Councils, appellants, several of the abutting property owners and businessmen on East Boulevard, organized and instituted a suit for injunctive relief against the Director of Public

Works of the City-Parish to prevent the effectuation of these ordinances. *Raymond P. Scott, et al v. Woodrow W. "Woody" Dumas, et al*, 81-C-0872, Docket No. 234,244, Division "L," 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

The petitioners in this suit were all people with substantial interests in businesses, churches, and residents on East Boulevard. In their original complaint, appellants attempted to explain the significance to their interest and to the area if the name of East Boulevard was changed by these ordinances. Petitioners stated that the address of their businesses and residences on East Boulevard have been widely circulated, advertised and given to customers, relatives, friends and commercial users, salesmen, wholesalers, governmental and political officials and others throughout the United States and abroad. According to the petition, the petitioners' business reputations and their sense of community and civic pride were closely associated with the name of the street upon which they worked and lived. Their business reputations for operating dependable and stable business establishments were viewed by the petitioners as necessarily linked with their location on "East Boulevard." Petitioners further contended that the name change would cause immediate, substantial expenses for public advertisement and notification of loyal customers of the address change which would follow from a name change of the street.

Appellant-petitioners asserted that the ordinances were invalid on several grounds. First, because the ordinances were not passed pursuant to proper legislative procedures as required by State law and without proper notice to abutting property owners and businessmen located on East Boulevard.

Second, the ordinances enacting the name change were alleged to be an arbitrary and capricious exercise of municipal power without relation to a legitimate governmental purpose. Finally, petitioners contended that the ordinances were misleading, discriminatory, and were therefore violative of the constitutional mandates of Due Process and Equal Protection provided by the United States Constitution and the Louisiana Constitution. It was the appellants' position that they had a vested interest which would be adversely affected by the ordinances and that the ordinances would deprive them of this interest without due process and without proper compensation.

On May 5, 1980, the case came for hearing on a rule for preliminary injunction before the Honorable Douglas B. Gonzales, Judge of the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana. After two days of testimony May 5, 1980 and May 12, 1980), Judge Gonzales took the matter under advisement. Based upon the evidence presented at the two days of trial, Judge Gonzales issued a statement of partial findings of fact and conclusions of law which was filed into the record on May 30, 1980. (Appendix B-2.) The partial findings of fact were as follows:

"1.) By Parish Ordinance No. 5475, City Ordinance No. 4209, the City-Parish Council has renamed portions of a continuous street, which was previously named Texas Street and East Boulevard. The new name is Thomas H. Delpit Drive.

"2.) The sole motivation of the Council member who introduced the ordinance was to honor the father of a political rival in order to minimize political opposition to himself and to bring about harmony between two opposing political factions. (Defense

counsel has stipulated that the purpose of the ordinance was political in nature.)

"3.) The Court finds the ordinance served no other governmental purpose because the street already had names.

"4.) The Court finds as a fact that all the councilmen who supported the ordinance did so as an accommodation to Councilman Howard Marsellus or Representative Joseph Delpit.

"5.) The Court finds that those councilmen who opposed the matter did so because they did not believe it was a proper function of local government to act in that manner.

"6.) The Court finds that the name change originally intended for the entire street was modified, so that a portion of the street maintained the old name, East Boulevard.

"7.) The Court further finds that that portion still named East Boulevard is a racially mixed area, with both black and white churches, businesses and residences.

"8.) The portion of East Boulevard which name was unchanged is the boundary of an "Historical District" in the City of Baton Rouge, namely Beauregard Town.

"9.) The Court further finds that the purpose for not changing that portion of East Boulevard by the council was based on legal arguments and persuasion concerning its "Historical District" designation, and was not done to discriminate against the contiguous

> property owners of the remainder of the street which name was unchanged."

In addition, Judge Gonzales stated in the Partial Findings of Fact and Conclusions of Law he filed in the record that the "remaining issues of law touch on the fundamental relationship of a state court with plenary power derived from the Louisiana Constitution, and a municipal corporation vested with limited power delegated by its Plan of Government," and because of this the Trial Court reopened the case on its own motion for argument and invited amicus curiae briefs to be filed in the matter by the Baton Rouge Bar Association, the Louisiana Municipal Association and the Louisiana Police Jury Association. For the benefit of those who might file briefs in the case, the Court characterized the issue present for decision:

> "Whether or not a state court can invalidate a municipal ordinance where that ordinance was enacted for purely political purposes, or whether or not a substantial governmental purpose or interest must underlie all legislative actions by municipal corporations." (Appendix B-2).

No amicus curiae briefs were filed.

On August 4, 1980, the Honorable Judge Douglas B. Gonzales issued the decision of the Trial Court in favor of the plaintiffs decreeing the ordinances null, void and of no legal effect and permanently enjoining the defendants from taking any action to change the name of East Boulevard under the ordinances. (Appendix B-1.) Judgment was duly signed on August 27, 1981. (Appendix B-1.)

The Trial Court concluded from the evidence submitted at

trial that as a matter of fact no governmental purpose was served by the name change and that the ordinances were enacted solely to fulfill political objectives of members of the councils. It was the opinion of the Trial Court that municipal ordinances enacted for purely political purposes are not valid acts of municipal authority and cannot withstand challenges by individuals with interests adversely affected by such ordinances. Only ordinances pursuant to delegated authority and enacted to further legitimate governmental interests consistent with the delegated authority are legal and valid enactments. The Trial Court rejected, however, any due process or equal protection basis for its decision, and instead predicated its holding on the grounds that the councils had exceeded their grant of municipal authority, purely political purposes are beyond the scope of the legislative power of the City of Baton Rouge and the Parish of East Baton Rouge. The Trial Court in its opinion stated:

> "A)n ordinance will not be sustained solely because it could, under some circumstances, fall within the appropriate exercise of a delegated authority. The purported exercise of that power cannot be made a mere pretext for legislation that does not fall within it. There must be some substantial connection between the purpose of the regulation and the provisions of it, and the provisions must in some appropriate manner be designed for and tend toward the accomplishment of the legitimate objects for which the power is exercised. . . .
>
> "The provisions of the ordinance in this case were unquestionably designed not to facilitate the more efficient management of City-Parish affairs, because the street already had a name and now would have two names, but to fulfill political objectives of the member who proposed the ordi-

nance and of the members who supported it. Likewise, to change the name of a street which has existed, under its present name for more than fifty years cannot possibly tend toward more efficient City-Parish operations. On the contrary, the orderly processes of government dependent on the uniform and unique ordering of streets and other public ways can only be disrupted by the renaming of established thoroughfares.

"This is not to say that no possible governmental objective can be served by the renaming of a street. If the City-Parish Council desires, it can honor distinguished citizens by naming a street, park or building in their honor. But it was shown at the hearing on the injunction that no such motive was present. The members of the council were amazingly candid as to their motive in supporting the ordinance. Their support was given solely as a political favor to a fellow councilman, or in some cases, as a favor to a former councilman. The evidence was so clear and convincing on that point that the counsel for the defendant stipulated in his argument that no governmental purpose was put forth as a basis for the name change. Under those circumstances, the validity of the ordinance cannot be sustained.

"Therefore, judgment is rendered in favor of petitioners, and against the defendants, permanently restraining, enjoining and prohibiting the defendants, their agents, employees and all other persons, firms or corporations acting or claiming to act in their behalf or under their authority, from taking any action that would permit, lead to or change the name of East Boulevard, or doing any other act that would lead to the changing of the name of East Boulevard, **under the ordinance as enacted in this case.**" (Appendix B-1.)

The appellees appealed to the First Circuit Court of Appeal of the State of Louisiana.

On March 2, 1981, in a very brief opinion, the First Circuit Court of Appeal of the State of Louisiana rejected the finding of fact that the ordinances were enacted for purely political purposes and that the ordinances served no legitimate governmental objective, and reversed the Trial Court. 396 So. 2d 378, La. App. 1st. 1981. (Appendix A-2)

Appellants sought relief by petitioning for a writ of certiorari from the Louisiana Supreme Court. On April 27, 1981, the writ was denied with two justices dissenting. (Appendix A-1.) A motion for an order granting stay of mandate filed with the Supreme Court of the State of Louisiana on May 6, 1981 was denied on May 8, 1981.

Thereafter, on May 10, 1981, appellants filed a motion for stay pending review of certiorari with this Court which was presented to Justice Powell, who denied the motion on May 12, 1981. (Appendix D-2.)

Appellants now seek relief from this Court pursuant to 28 U.S.C.A. § 1257(2) on the grounds that the said ordinances are repugnant to the 14th Amendment of the United States Constitution.

ARGUMENT

A local ordinance is deemed a state statute for purposes of invoking the jurisdiction of this Court to review the validity of a state statute which has been assailed as unconstitutional and which has been held valid by final judgment or decree of the highest state court in which a decision could be had. *Erznoznik v. City of Jacksonville, Florida*, 422 U.S. 205

(1975). The City-Parish Councils of the City of Baton Rouge, Louisiana, and the Parish of East Baton Rouge are the local governing bodies in the Parish of East Baton Rouge. These Councils are political subdivisions of the State of Louisiana, therefore, the ordinances herein are deemed state statutes for purpose of invoking the jurisdiction of this Court.

The First Circuit Court of Appeals of the State of Louisiana reversed the judgment of the Trial Court below principally on its rejection of the finding of fact of the Trial Court that the ordinances had no valid governmental purpose. In view of the Court of Appeal's reversal, it must have concluded that the Trial Court committed a manifest error in resolving that the ordinances had no valid governmental objective, and were enacted for solely political purposes, for the appellate court to reverse under Louisiana law. *Brewer v. Foshee*, 179 So. 87 (La. 1938). *Smith v. Government Employees' Insurance Company*, 358 So. 2d 1289 (La. 1978). The appellants submit to this Court that the Court of Appeal below erred in failing to find that the Trial Court was supported by the record, which the Trial Court believed revealed that the ordinances were unquestionably designed to fulfill purely political purposes and not to serve a valid governmental objective. (Appendix B-1.)

The Trial Court Judge acting as the trier of fact sat through two days of hearings on the merits of this case. The Trial Court Judge was present to hear every witness and the tenor of their testimony. After hearing the testimony of the witnesses, the Trial Court concluded:

"The provisions of the ordinance in this case were un-

> questionably designed, not to facilitate the more efficient management of City-Parish affairs, because the street already had a name and now would have two names, but to fulfill political objectives of the member who proposed the ordinances and of the members who supported it. Likewise, to change the name of a street which has existed, under its present name for more than fifty years cannot possibly tend toward more efficient City-Parish operations. On the contrary, the orderly processes of government dependent on the uniform and unique ordering of streets and other public ways can only be disrupted by the renaming of established thoroughfares." (Appendix B-1.)

The Trial Court was fully cognizant, as its opinion reveals, that to be valid, governmental acts must fall within the scope of delegated authority:

> "There must be some substantial connection between the purpose of the regulation and the provisions of it and the provisions must in some appropriate manner be designed for and tend toward the accomplishment of a legitimate objective for which the power is exercised." (Appendix B-1.)

The Trial Court recognized that there were possible governmental objectives which could be served by the renaming of a street. Yet, as the testimony displayed and as the trier of fact concluded, no such objective was intended by this action. According to the written reasons for judgment issued by the Trial Court, "the members of the Council were amazingly candid as to their motives in supporting the ordinance." (Appendix B-1.) The support of the members of the Council "was given solely as a political favor to a fellow councilman." (Appendix B-1.) The Trial Court's own words

in its Written Reasons for Judgment illustrate the degree to which this fact was manifested:

> "The evidence was so clear and convincing on that point that the counsel for the defendant stipulated in argument that no governmental purpose was put forth as a basis for the name change." (Appendix B-1.)

Therefore, the Trial Court resolved, since the ordinances were enacted for purely political purposes, and, without a doubt, an illegitimate objective under the grant of authority, these ordinances could not withstand an attack on their validity.

Appellants submit that a review of the record adequately supports the Trial Court's finding of fact that the ordinances were enacted for purely political purposes and for no valid governmental purpose. This was a reasonable inference of fact based upon the evidence filed in the record. Thus, appellants submit that the question arises in view of this fact whether an ordinance enacted for such a purpose is consistent with the guarantees of Equal Protection and Due Process provided in the 14th Amendment to the United States Constitution.

I.

THE ORDINANCE VIOLATES THE 14TH AMENDMENT EQUAL PROTECTION CLAUSE

The ordinances herein did not change the name of the entire street known as East Boulevard. The section of the street in "Beauregard Town," a national historic section, was not affected by the name change. The Trial Judge's partial

findings of fact indicate it was the historic quality of the name "East Boulevard" to the Beauregard Town section which foreclosed any name change of East Boulevard in Beauregard Town. (Appendix B-2.) Only that portion of the street outside of Beauregard Town in the predominantly black business and residential section of the street is affected by the name change.[1]

As with all laws, these ordinances classify: some abutting property owners and businesses on East Boulevard are affected by the name change (appellants and others similarly situated outside Beauregard Town), and others are not affected (Beauregard Town residents along East Boulevard and residents on Texas Street past East Roosevelt Street). Legislation may classify and does so without necessarily violating the Equal Protection Clause of the 14th Amendment. U. S. Const. 14th Amendment, § 1. Yet, the Equal Protection Clause does demand that legislative classifications be reasonably related to legitimate governmental objectives.

Equal Protection is a guarantee that those who are similarly situated be similarly treated by law. *Rostker v. Goldberg*, 49 U.S.L.W. 4798 (U.S. 1981). A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The rationality standard Equal Protection mandates necessarily leads to judicial examination of the means (classes) and ends or purposes of state action. In order to enforce the guar-

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[1] The name of East Boulevard was changed for the section of East Boulevard running from Myrtle Street to East Washington Street, and the name of Texas Street was changed for the area from East Washington Street to East Roosevelt Street to "Thomas H. Delpit Drive." (Appendix D-1.)

antee of equal treatment, statutory classifications must rest on some ground or difference having a fair and substantial relation to a legitimate state purpose. *Dukes v. City of New Orleans*, 427 U.S. 297 (1974). Moreover, the challenge distinction must rationally further some legitimate, articulated state purpose. *McGinnis v. Royster*, 410 U.S. 263 (1973), *Jimenez v. Weinberger*, 417 U.S. 628 (1974) and *Department of Agriculture v. Moreno*, 413 U.S. 528 (1973). *Western & Southern Life Insurance Co. v. State Board of Equalization of California*, 101 S.Ct. 2070 (1981).

The question then arises what are the legitimate, articulated interests substantially furthered by the class of persons who are affected by the ordinances. Appellants submit that the record illustrates the legislative classification created by these ordinances does not substantially further a legitimate, articulated governmental purpose. Therefore, the differential treatment of similarly situated people on East Boulevard resulting from the ordinances cannot stand constitutional muster. *McGinnis*, supra; *Michael M. v. Superior Court of Sonoma County*, 101 S.Ct. 1200 (1981).

The Trial Court below, on the basis of the uncontradicted testimony of the appellees themselves, concluded that the ordinances were enacted for purely political purposes. (Appendix B-1-2.) Specifically, the measures were an attempt by Councilman Howard Marcellus to minimize political opposition to himself and to bring about harmony between two opposing political factions.[2]

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[2] Councilman Howard Marcellus was defeated in the following election.

It is apparent from the plan of government of the Parish of East Baton Rouge and the City of Baton Rouge that the councils have limited powers with regard to streets in the parish. Such powers were delegated to serve genuine public needs: directional assistance; mail carrier systems; provide better maintenance; more efficient transportation and traffic. As the Trial Court observed in its well-reasoned opinion, the purported exercise of power cannot be made a mere pretext for legislation that does not fall within it; there must be some substantial connection between the purpose of the regulation and the provision of it. (Appendix B-1.) The Trial Court resolved after two days of hearings that these ordinances were not passed to facilitate the more efficient management of city-parish affairs, or to further any other legitimate governmental objective. The only reason for these ordinances was to fulfill purely political objectives of the member who proposed the ordinance and the members who supported them. (Appendix B-1.) It was even contrary to the public interest to change the name of a street which was well known in the area by that name for over seventy-five years. If the orderly processes of government do depend upon the uniform and unique ordering of streets and other publiic ways, this objective is defeated by the enactment of a name change to a well known street. (Appendix B-1.) Legislation enacted for purely political purposes transgresses the fundamental principle encompassed in the Louisiana Constitution and the United States Constitution that the only legitimate ends of government are the preservation of peace, the protection of rights, and the promotion of the happiness and the general welfare of the people. The legitimate objectives of government do not include the advancement of individual politicians' political fortunes.

Appellants do not contend that this Court should subject this classification to the so-called "strict scrutiny" standard of review. According to this standard, a classification is only justified if it is necessary to the achievement of a compelling state interest. *Shapiro v. Thompson*, 394 U.S. 618; 89 S.Ct. 1322; 22 L.Ed. 2d 600 (1969). *Brown v. Board of Education*, 347 U.S. 483 (1954). The proper approach or analysis in this case is provided by a less exacting standard of review than "strict scrutiny." Yet, if Equal Protection is to receive more than lip service, the degree of scrutiny must be more than the approach associated with the traditional Equal Protection analysis applied in most cases, excepting when "strict scrutiny" is invoked. *Railway Express Agency v. New York*, 336 U.S. 106 (1949), *McGowan v. Maryland*, 366 U.S. 420 (1961), *McDonald v. Board of Education*, 394 U.S. 802 (1969). The traditional Equal Protection standard of "mere rationality," in application has been so differential as to emasculate the guarantee of Equal Protection of the law, except, again, where the Court invokes so-called "strict scrutiny," *Marshall v. U.S.*, 414 U.S. 417 (1974). (See Justice Marshall's dissent, 431-432). Perhaps it is this concern that has led to the development of a more demanding criteria of what is a rational legislative classification. *McGinnis*, supra; *Dukes*, supra; *Michael M.*, supra; *Reed v. Reed*, 404 U.S. 71, (1971); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Department of Agriculture v. Moreno*, supra; *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307 (1976); and *Jimenez*, supra. This approach calls for the means to substantially further legitimate, articulated state purposes. The purpose must be non-illusory. This modern approach to Equal Protection repudiates lesser standards under which statutory discriminations would not be set aside if any state of facts reasonably could

be conceived to justify them. See, *McGowan v. Maryland*, supra; *McDonald v. Board of Education*, supra; *Royster Guano Co. v. Virginia*, 253 U.S. 412 (1920). Appellants submit that these decisions employed a standard which was far below that required by the Equal Protection Clause of the 14th Amendment. The rationality of a classification depends on the furtherance of articulated or actual purposes of legislation. "The Equal Protection Clause ceases to assure either equality or protection if it is avoided by any conceivable difference that could be pointed out between those bound and those left free." *Railway Express Agency v. New York*, supra. (See Justice Jackson, concurring.)

Thus, in order to give efficacy to the guarantee of equal protection of the law, the Court has articulated a more demanding criteria for legislation to meet the muster of Equal Protection. The rationality of legislation is tested according to articulated or actual purposes of the challenged classification. The Court looks at what the legislature actually intended and tests the rationality of the classification by it. Accordingly, a real degree of rationality is imposed upon legislative discrimination in place of a doctrine of great deference, which actually meant total deference. See *McDonald v. Board of Education*, supra. By looking at what the legislature has actually intended, the Court will be better able to adequately determine if the dissimilar treatment under the legislation is in fact rational and in accord with the guarantee of Equal Protection. The application of this Equal Protection analysis preserves the function of the judiciary to review the constitutional validity of law, assures the protection of the constitutional guarantee of Equal Protection, and still leaves legislative bodies with great leeway in formulating legislative clas-

sification and does not subvert the doctrine of judicial deference to legislative policy decisions.

One recent decision can act as a guide to the proper approach to the Equal Protection question before the Court. In *Department of Agriculture v. Moreno*, supra, this Court held unconstitutional a provision of the Federal Food Stamp Program of assistance to households. In that case the Court addressed the stated purposes of the legislation to test the rationality of the classification. The Court found from the legislative history the definition of households, which was in question, and which excluded unrelated persons living together, was intended to exclude "hippy communes from the Food Stamp Program." The Court held that this purpose was impermissible: ".... a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." supra, p. 534. Since the purpose of the legislation ascertained from the evidence was impermissible, the legislative classification was found "wholly without any rational basis." supra, page 538.

If the Court would have been willing to speculate on conceivable justifications in this case, there is little doubt that this impermissible purpose would have been allowed to be achieved under the statute. There is a great deal of similarity between the *Moreno* case and the case before the Court in that in both cases the legislative intent was to harm groups for political purposes, which is an impermissible objectives of government.

The precise purpose of legislative action is often unclear, and this Court has long warned of the hazards accompanying inquiries into purpose. *U.S. v. O'Brien*, 391 U.S. 367

(1968); *Palmer v. Thompson*, 403 U.S. 217 (1970); *Michael M. v. Superior Court of Sonoma County*, supra. However, if the justification for the statute is made apparent, either in the legislation itself or through other recognizable sources, it should be accorded a great degree of deference. *Reitman v. Mulkey*, 387 U.S. 369 (1967). When the statutory purpose is clear, the Court has confined its inquiry to the stated purposes, *Johnson v. Robison*, 415 U.S. 361; 94 S.Ct. 1160 (1974).

> "Never, to my knowledge, have we endeavored to sustain a statute upon a supposition about the legislators' purpose in enacting it when the asserted justification can be shown conclusively not to have underlain the classification in any way.
>
> "Indeed to do so is to undermine the very premises of deference to legislative determination. If a legislature, considering the competing factors, determines that it is a wise policy to treat two groups of people differently in pursuit of a certain goal, courts often defer to that legislative determination. But when a legislature has decided not to pursue a certain goal, upholding a statute on the basis of that goal is not proper deference to a legislative decision at all; it is deference to a decision which the legislature could have made but did not."

See Justice Brennan, dissenting in *Schlesinger v. Ballard*, 419 U.S. 498 (1975), at page 520-521.

The First Circuit Court of Appeals below rejected the Trial Court's conclusion that the rationale for the ordinance was political aggrandizement. Appellants submit the stated justification ascertained by the Court of Appeals (Appendix A-2) is not accurate under a genuine review of the record as

was found by the Trial Court. (Appendix B-2.) The Court should test these ordinances by their admitted purpose—political considerations—and preserve the principle of judicial deference to legislative determinations. A degree of scrutiny which actually examines legislative means and purposes furthered also could have possible ameliorating effects on the political system:

> "Examination of means in light of asserted state purposes could directly promote public consideration of the benefits assertedly sought by the proposed legislation; indirectly, it could stimulate further political examination, in relation to those benefits, of the costs that could be incurred if the proposed means were adopted.
>
> "A common defense of extreme judicial abdication is that the state has considered the contending considerations. Too often the only assurance that the state had thought about the issues is the judicial presumption that it has. Mean scrutiny would provide greater safeguards that the presumed process corresponds to reality—and would thereby give greater contents to the underlying premises for deferring to the State's resolution of the competing issues.
>
> "(A demand for) greater State articulation of legislative rationale seems an appropriate ingredient of mean scrutiny . . . . there is no inherent lack of judicial capacity to demand more of the State than the court required in *Williamson v. Lee Optical Co.*, for example . . ." Gunther, "Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection," 86 Har. L. Rev. 1 (1972).

Appellants submit that the legislative classsification created by the ordinances in this case does not substantially further any legitimate, articulated state interest. Again, as

found by the trier of fact below, these ordinances were enacted for purely political purposes and not to further any legitimate governmental objective. (Appendix B-2). Appellants submit the record supports the conclusions of the Trial Court. Therefore, since the ordinances were not enacted by the Council to further a legitimate state objective, the ordinances are "wholly without any rational basis," and violative of the Equal Protection Clause of the 14th Amendment. *Department of Agriculture v. Moreno*, supra. *Western and Southern Life Ins. Co. v. State Bd. of Equalization of California*, supra.

II.

THE ORDINANCE IS VIOLATIVE OF THE 14TH AMENDMENT DUE PROCESS CLAUSE

The fundamental constitutional right of every person within the jurisdiction of the United States to Due Process of law is directly involved when the Federal or State governments legislate. Due Process of law is the basic protection of civil liberty under our law. Without it, no legal system could be deemed to be a system based upon liberty, for liberty would have no real protection from the arbitrary actions of the majority. The Due Process Clause in our constitution is designed to exclude oppression and arbitrary action by government. The persuasive function of the Due Process Clause is to exact from the state observance of basic liberties. *U. S. Ex rel Auld v. Warden of N.J. State Penitentiary*, 187 F. 2d 615 (3rd Cir. N.J.). When Due Process is evoked to protect substantive rights affected by legislative action, it requires that the legislation have a reasonable relation to a proper legislative purpose, and not be so far beyond the necessity of the case as

to be an arbitrary exercise of governmental power. *Nebbia v. New York*, 291 U.S. 502 (1934).

Life, liberty and property are the values protected by the Due Process Clause of the 14th Amendment. The court has given content to these fundamental values and decisions involving the permissible substance of state law and not merely in cases involving questions of permissible procedures. *Stanley v. Georgia*, 394 U.S. 557; 89 S.Ct. 1243 (1969).

The allegation that a statute violates Due Process can be asserted if there are recognizable rights that are affected. Appellants allege and believe that the record supports their allegation that they have personal, economic and noneconomic, interests which are cognizable under the concepts of liberty and property protected by the 14th Amendment. The contours of the right of liberty guaranteed by the clause, appellants submit, are best understood by the definition of liberty given by the late Justice Harlan in *Poe v. Ullman*, 367 U.S. 497; 81 S.Ct. 1752 (1961):

> "It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints, (citation of cases) and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment." 367 U.S. at page 543; 81 S.Ct. at page 1777.

If we read Justice Harlan's definition of liberty correctly, legislation affecting liberties must have some rational basis and such legislation is subject to careful scrutiny to see if it meets that criteria. Appellants submit that ordinances such as the ones in this case enacted for purely political purposes

deprived them of this liberty so brilliantly expressed in the words of Justice Harlan.

The extent of the damages and loss of business because of the name change cannot be determined with any degree of certainty. However, we know that it is tremendous in proportion to the investment of the appellants, some of which represents their entire life savings. Thus, according to the appraisal of just one businessman affected by the name change caused by these ordinances, he will suffer immediate expenses estimated in the sum of $7,500.00. Other consequences to his business can only be the object of speculation, but no doubt some will follow, if only from the diversion of necessary business capital for expenses to adapt the business to its change of address caused by the street name change. With these considerations in persective, appellants suggest they do possess a very real and substantial interest encompassed within the concept of property which should be afforded the full protection of the Due Process Clause.

Whether or not these ordinances are rationally related to a valid governmental objective is the question to be investigated, if the Court is to give full content to the protection afforded by Due Process. Appellants understand that the Court has long recognized that inquiries into "motive or purpose are a hazardous matter." *U.S. v. O'Brien*, supra; *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252 (1977). However, under the facts of this case no hazard is likely in determining the purpose of these ordinances, since this has been provided by the testimony of the very councilmen who enacted the ordinances and the finding of fact made by the Trial Court below. (Appendix B-2). The purpose of these ordinances was made manifestly clear by all

concerned—it was a political purpose. (Appendix B-2). The Court need not consider other purposes to determine if they could justify these ordinances as it has done in the past. *Williamson v. Lee Optical*, 348 U.S. 483 (1955). *Orr v. Orr*, 440 U.S. 268 (1979). *Washington v. Davis*, 426 U.S. 229 (1976). The end of these acts was admitted and stipulated by counsel for the appellees in the trial below as disclosed in the Trial Court's written reasons for its decision. (Appendix B-1). Although a state's asserted reason for a statute may be rejected, "if it could have not been a goal of the legislation," *Weinburger v. Wiesenfeld*, 420 U.S. 636 (1975), appellants submit it is a different case where the purpose is clear from the deliberations of the legislative body and confirmed throughout litigation on the issue. In this case the asserted reasons by the legislative body should be given great deference. *Reitman v. Mulkey*, supra; *Michael M. v. Superior Court of Sonoma County*, supra.

In *City of Memphis, et al v. Green, et al*, 101 S.Ct. 1584 (1981), decided on April 20, 1981, this Court reversed the holding of the U.S. Sixth Circuit that the effect of a street closing, which erected a barrier between a predominantly white neighborhood and a predominantly black neighborhood, rose to the level of a "badge of slavery."

When the Court examined the constitutional claim in the *Green* case, supra, it addressed the record to ascertain the purpose for the resolution in order to determine whether the purpose justified the adverse impact of the street closing on the affected respondents' property interest.

Although it was stipulated in oral argument by the attorney for respondents that the purpose of the ordinances was

political, should there be any doubt in the Court's mind that they were political, we believe that the *Green* case, supra, is ample authority for the Court to examine the record in Appellants' case to discover the exact purpose of the ordinances.

Finally, appellants questioned the power of the Councils of the City of Baton Rouge and the Parish of East Baton Rouge to enact the ordinances under the authority granted the Council under the Charter from the state, in that the charter contained very specific and detailed authority with reference to re-naming streets. (Appendix D-3). But, if we should concede that the Councils have such authority, it is not, as Justice Brennan stated in *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494, at 507; 97 S.Ct. 1932, at 1939, "a license for local communities to enact senseless and arbitrary restrictions."

SUMMARY

1. The Honorable Trial Judge, being closely associated with the respective parties and the Baton Rouge area, was most able to determine the true intention of the City-Parish Councils.

2. The Trial Court was correct in determining that there was no rational basis for enacting the respective ordinances and the ordinances served no governmental purpose.

3. The respective ordinances do not satisfy the requirements set forth by the United States Supreme Court and are repugnant to the guarantee of the Due Process and Equal Protection Clause of the United States Constitution.

CONCLUSION

For the reasons stated above, the appeal of the appellants should be accepted for proper review by the members of this High Court.

Respectfully submitted:

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DATED: July ____, 1981

CERTIFICATE OF SERVICE

Undersigned counsel does hereby certify that copies of the foregoing have been mailed, with first-class postage prepaid, addressed to the following named opposing counsel of record:

Mr. Joseph F. Keogh
Assistant Parish Attorney
Post Office Box 1471
Baton Rouge, Louisiana 70821

Baton Rouge, Louisiana, this ____ day of July, 1981.

J. D. De BLIEUX

APPENDICES

APPENDIX A-1

THE SUPREME COURT OF THE STATE OF LOUISIANA

No. 81-C-0872

RAYMOND P. SCOTT, ET AL

VS.

WOODROW W. "WOODY" DUMAS,
MAYOR-PRESIDENT, ET AL

In Re: Raymond P. Scott, et al applying for writ of Certiorari or Review to Court of Appeal First Circuit, Parish of East Baton Rouge, Number 14,061.

April 27, 1981

Writ Denied.

JLD
JAD
PFC
WFM
HTL

Blanche and Watson, J.J., would grant.

Supreme Court of Louisiana
April 27, 1981
Dan B. Haggerty Jr.

Dy. Clerk of Court
For the Court

APPENDIX A-2

1. Judgment of Louisiana First Circuit Court of Appeals

STATE OF LOUISIANA

COURT OF APPEAL, FIRST CIRCUIT

P. O. Box 3237

Baton Rouge, Louisiana 70821

DATE OF LODGING: September 30, 1980

Docket Number: 14,061

RAYMOND P. SCOTT, ET AL

VERSUS

WOODROW W. "WOODY" DUMAS,
MAYOR-PRESIDENT, ET AL

NOTICE OF JUDGMENT

TO:

J. D. De Blieux
Joseph F. Keogh, Atty.

Dear Sirs:

You are hereby served with a copy of the opinion in the above case in which you are an attorney of record.

Your attention is invited to the amended Rule XI of the Uniform Rules of the Courts of Appeal. Please note Article 2166 of the Code of Civil Procedure, as amended effective January 1, 1978.

CLERK OF COURT

I hereby certify this notice of judgment was mailed to the above listed attorneys and/or parties this date MAR. 2, 1981.

Edward R. Seghen
CLERK OF COURT

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT
NUMBER 14,061

RAYMOND P. SCOTT, LEWIS A. BONFANTI, REV. ROBERT D. THOMAS, VINCENT S. DIMATTIA, ROBERT PARKER, ALTON E. INGRAM, CHARLES McCUE, JR., HERBERT WILLIAMS, CHARLES N. SCOTT, MABLE C. SCOTT, EDWARD L. DAIGNE, RICHARD NELSON, THEODIS WHITE, MRS. THEODIS WHITE, MRS. VERA L. SCOTT, REV. FRANK R. WINDER, REV. EMANUEL McFIELDS and MRS. LEOLA M. YOUNG

VS.

WOODROW W. "WOODY" DUMAS, MAYOR-PRESIDENT, GEORGE R. DABBS, PRESIDENT-PRO-TEMPORE, JOHNNY DYKES, CARL CRANE, PEARL GEORGE, HOWARD MARSELLUS, TOMMY NECK, DR. C. P. "TONY" CURRIE, EDGAR WATTS, EARL DAY, EARL HARRISON, JEWEL J. NEWMAN and MICHAEL G. ROUBIQUE

all in their official capacity as Mayor-President of the City of Baton Rouge, Parish of East Baton Rouge, and as members of the City-Parish Council of the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, and Ray W. Burgess as Director of the City-Parish Department of Public Works.

ON APPEAL FROM THE 19TH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, HONORABLE DOUGLAS M. GONZALES, JUDGE.
BEFORE: LOTTINGER, EDWARDS AND PONDER, JJ.
EDWARDS, JUDGE. MAR. 2, 1981

Woodrow W. "Woody" Dumas, Mayor-President of the City of Baton Rouge, Parish of East Baton Rouge, and thirteen other named defendant officials, appeal a trial court judgment enjoining them from doing any act which would lead to changing the name of East Boulevard in Baton Rouge under Parish Ordinance 5475 and City Ordinance 4209. We reverse and render.

As the result of a petition filed by Raymond P. Scott and seventeen other named plaintiffs, the trial court enjoined defendants from changing part of East Boulevard to Thomas H. Delpit Drive on the ground "that the name change was effected for purely political considerations" and to bring about harmony between two opposing political factions. In written reasons for judgment, the court stated "counsel for the defendants stipulated in argument that no governmental purpose was put forth as a basis for the name change. Under those circumstances, the validity of the ordinance cannot be sustained."

A careful examination of the record shows that there was a valid purpose behind Ordinances 5475 and 4209 — to honor Thomas Henry Delpit for his contributions to the community. In fact, the trial judge himself elicited that purpose from Councilman Howard Marsellus, Jr., one of the defendants. Furthermore, defense counsel never stipulated that the ordinances had "no governmental purpose(.)" Counsel merely stipulated that one witness, Charles McKuen, received a certain letter (P-1) from Councilman Marsellus. In that letter, Mr. Marsellus urged that the name change would both bring the community together and honor Thomas Delpit. Regardless of

political motives, each of these reasons provides a valid governmental purpose for the proposed name change.

The ordinances in question were passed only after all the procedural requirements were met and, regardless of the wisdom of giving portions of the same street three different names, were certainly within the power of the City-Parish government, express or implied, to adopt.

For the foregoing reasons, the trial court judgment appealed from is annulled and reversed. Plaintiffs' petition is hereby dismissed and all costs, both trial and appellate, are to be paid by pulaintiffs-appellees.

REVERSED AND RENDERED.

APPENDIX B-1

NOTICE OF ORDER OF JUDGMENT IN COMPLIANCE WITH THE CODE OF CIVIL PROCEDURE ARTICLE 1913

Re: RAYMOND P. SCOTT, ET AL

VS.

WOODROW W. "WOODY" DUMAS,
MAYOR-PRESIDENT, ET AL

To. J. D. De Blieux
Joseph F. Keogh

No. 234,244 Civil Docket L,
19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

GREETING:

You are hereby notified that a decision was rendered and spread on the minutes of Civil Docket L on the 4th day of August, 1980 in the above entitled and numbered cause, and the following is a true copy of the entry of said decision:

For written reasons assigned, judgment is rendered in favor of petitioners, and against the defendants, permanently restraining, enjoining and prohibiting the defendants, their agents, employees and all other persons, firms or corporations acting or claiming to act in their behalf or under their authority, from taking any action that would permit, lead to or change the name of East Boulevard, or doing any other act that would lead to the changing of the name of East Boulevard, **under the ordinance as enacted in this case,**

Further judgment is rendered in favor of the petitioners and against the defendants, decreeing that the ordinance is null, void and of no legal effect.

Judgment will be signed accordingly.

( ) Oral decision

(X) Written decision, a copy of which is enclosed herewith.

Thus done, signed, filed and mailed at Baton Rouge, Louisiana, on this 4th day of August, 1980.

s/ Nenie Palmer
Deputy Clerk of Court

RAYMOND P. SCOTT, ET AL

VERSUS

WOODROW W. "WOODY" DUMAS,
MAYOR-PRESIDENT, ET AL

SUIT NUMBER 234,244 DIVISION L
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

WRITTEN REASONS FOR JUDGMENT

On February 27, 1980, the City-Parish Council for the City of Baton Rouge, Parish of East Baton Rouge, renamed portions of a continuous street, previously named Texas Street and East Boulevard, to Thomas H. Delpit Drive, over the objections of persons located on the street. This is a suit, brought by enumerated petitioners, who are businessmen located on, or residents of that Baton Rouge City street; directed at the defendants, the members of the City-Parish Council of the City of Baton Rouge, Parish of East Baton Rouge and the Director of Public Works, in their official capacities.

The petition seeks relief in the form of an injunction, prohibiting the defendants from taking any further steps to effectuate the name change of East Boulevard, pursuant to the ordinance, (Parish Ordinance Number 5475, City Ordinance 4290). In support of the injunction, petitioners attack the ordinance as being unreasonable, illegal, arbitrary and capri-

cious. In the alternative, and in the event that the Court refuse to issue the injunction, the petitioners ask for monetary damages, as compensation for the claimed business losses and inconvenience resulting from the proposed name change.

Prior to the hearing on the injunction, counsel for the defendants filed dilatory exceptions, which were argued on April 28, 1980. At that time, the Court overruled the exception of unauthorized use of summary process, and, upon the admission of the counsel for the petitioners that any request for damages would be relegated to a subsequent suit, the Court overruled the exception of improper cumulation of actions.

At the evidentiary hearings on the preliminary injunction held on May 5, 1980 and May 12, 1980, the Court listened to the testimony of the petitioners and the City-Parish Council members, among others. Based on that testimony and the evidence presented, the Court made partial findings of fact and conclusions of law, which were filed in the record on May 20, 1980.

Briefly, the Court, on the basis of the uncontradicted testimony of the defendants, concluded that the name change was effected for purely political considerations. Specifically, the measure was an attempt by Councilman Howard Marcellus to "minimize political opposition to himself and to bring about harmony between two opposing political factions." Finding of Fact Number 2. No member who voted in favor of the ordinance was able to name a governmental purpose which was furthered by the action of the Council.

The Court further concluded that the reasons for not changing the name of a portion of the street were not founded on any intent to discriminate against the petitioners in this suit, eliminating any possible cause of action based on racial discrimination. Lastly, the Court determined that no due process or equal protection rights were impinged upon.

Thus, the only remaining question before the Court is whether a municipal ordinance, enacted solely for political reasons can withstand attack. To answer this question, the source and limits of power of local government must be examined.

As the Louisiana Supreme Court observed in *Bradford v. City of Shreveport*, 305 So. 2d 487 (La. 1975):

> "It has long been settled in this state that municipal corporations are creatures or agencies of the state established by the legislature for the purpose of administering local affairs of government and, as such, possess only those powers delegated by the state."

Therefore, any legal and valid governmental act must fall within the scope of a delegated power.

The Parish Council has been granted broad, general powers under Chapter 3, Section 3.01(b.) of the Plan of Government of the Parish of East Baton Rouge and the City of Baton Rouge, with regard to streets and other public ways throughout the parish. In the context of this case, the public needs served by the naming of streets are evident; to provide directional assistance to travellers, mail carriers and others, and to provide better management of all city and parish affairs. The ordinance, then, was ostensibly enacted pursuant to a clearly delegated authority.

However, an ordinance will not be sustained solely because it could, under some circumstance, fall within the appropriate exercise of a delegated authority. "The purported exercise of that power cannot be made a mere pretext for legislation that does not fall within it. There must be some substantial connection between the purpose of the regulation and the provisions of it, and the provisions must in some appropriate manner be designed for and tend toward the accomplishment of the legitimate objects for which the power

is exercised." *Hi-Lo Oil Company v. City of Crowley*, 274 So. 2d 757 (La. App., 3rd Cir. 1973).

The provisions of the ordinance in this case were unquestionably designed, not to facilitate the more efficient management of City-Parish affairs, because the street already had a name and now would have two names, but to fulfill political objectives of the member who proposed the ordinance and of the members who supported it. Likewise, to change the name of a street which has existed, under its present name for more than fifty years cannot possibly tend toward more efficient City-Parish operations. On the contrary, the orderly processes of government dependent on the uniform and unique ordering of streets and other public ways can only be disrupted by the renaming of established thoroughfares.

This is not to say that no possible governmental objective can be served by the renaming of a street. If the City-Parish Council desires, it can honor distinguished citizens by naming a street, park or building in their honor. But it was shown at the hearing on the injunction that no such motive was present. The members of the Council were amazingly candid as to their motive in supporting the ordinance. Their support was given solely as a political favor to a fellow councilman, or in some cases, as a favor to a former councilman. The evidence was so clear and convincing on that point that the counsel for the defendants stipulated in argument that no governmental purpose was put forth as a basis for the name change. Under those circumstances, the validity of the ordinance cannot be sustained.

Therefore, judgment is rendered in favor of the petitioners, and against the defendants, permanently restraining, enjoining and prohibiting the defendants, their agents, employees and all other persons, firms, or corporations acting or claiming to act in their behalf or under their authority, from taking any action that would permit, lead to or change the name of

East Boulevard, or doing any other act that would lead to the changing of the name of East Boulevard, **under the ordinance as enacted in this case.**

Further judgment is rendered in favor of the petitioners and against the defendants, decreeing that the ordinance is null, void and of no legal effect.

Judgment will be assigned accordingly.
Baton Rouge, Louisiana, this 4th day of August, 1980.

DOUGLAS M. GONZALES, JUDGE
DIVISION L
19TH JUDICIAL DISTRICT COURT

APPENDIX B-2

A TRUE EXTRACT OF CIVIL COURT MINUTES

NINETEENTH JUDICIAL DISTRICT COURT, DIVISION L, HONORABLE Douglas M. Gonzales, JUDGE PRESIDING, WAS OPENED PURSUANT TO ADJOURNMENT, ON DATE OF MAY 20, 1980.

RAYMOND P. SCOTT, ET AL

VS.

WOODROW W. "WOODY" DUMAS,
MAYOR-PRESIDENT, ET AL

Partial Findings of Fact and Conclusions of Law filed in the record. The Court on its own motion ordered the case re-opened for purposes of argument and invited amicus curiae briefs in this matter from the Baton Rouge Bar Association, the Louisiana Municipal Association, and the Louisiana Police Jury Association. The Court will set a date and time for oral argument in this matter.

THIS DONE AND SIGNED THIS 20th DAY OF MAY, 1980, AT BATON ROUGE, LOUISIANA.

Nenie Palmer
DEPUTY CLERK FOR
H. M. MIKE CANNON, CLERK OF COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

RAYMOND P. SCOTT, ET AL

VS

WOODROW W. "WOODY" DUMAS,
ET AL

NO. 234,244 DIVISION L
1928 JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

PARTIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

PARTIAL FINDINGS OF FACT

Based on the evidence presented in a two-day hearing, the Court makes the following partial findings of fact:

1.) By Parish Ordinance Number 5475, City Ordinance 4209, the City-Parish Council has renamed portions of a continuous street, which was previously named Texas Street and East Boulevard. The new name is Thomas H. Delpit Drive.

2.) The sole motivation of the Council member who introduced the ordinance was to honor the father of a political rival in order to minimize political opposition to himself and to bring about harmony between two opposing political factions. (Defense counsel has stipulated that the purpose of the ordinance was political in nature.)

3.) The Court finds the ordinance served no other governmental purpose because the street already had names.

4.) The Court finds as a fact that all the councilmen who supported the ordinance did so as an accommodation to Councilman Howard Marsellus or Representative Joseph Delpit.

5.) The Court finds that those councilmen who opposed the matter did so because they did not believe it was a proper function of local government to act in that manner.

6.) The Court finds that the name change originally intended for the entire street was modified, so that a portion of the street maintained the old name, East Boulevard.

7.) The Court further finds that that portion still named East Boulevard is a racially mixed area, with both black and white churches, businesses and residences.

8.) The portion of East Boulevard which was unchanged is the boundary of an "Historical District" in the City of Baton Rouge, namely Beauregard Town.

9.) The Court further finds that the purpose for not changing that portion of East Boulevard by the Council was based on legal arguments and persuasion concerning its "Historical District" designation, and was not done to discriminate against the contiguous property owners of the remainder of the street which name was changed.

PARTIAL CONCLUSIONS OF LAW

1.) The Constitution of Louisiana and the Plan of Government for the City-Parish vest broad power in the City-Parish government for the construction and maintenance of streets. Inherent in that grant of power is the power to name streets, and, therefore, to rename streets.

2.) The City-Parish government is vested with the power to name buildings, streets, parks, monuments and other publicly owned property after prominent citizens or anyone else it so chooses to honor. (However, the names of subdivision streets and of the subdivisions are made by the landowners of the property subdivided, subject only to reasonable regulations for good planning, as per City Ordinance 402, Section V, Par. 7.)

3.) As a matter of law, the Court finds no basis for invalidating the ordinance as a denial of equal protection or due process.

Since the remaining issues of law touch on the fundamental relationship of a state court with plenary power derived from the Louisiana Constitution, and a municipal corporation vested with limited powers delegated by its plan of government, this Court has decided to reopen this case on its own motion, for argument and invites amicus curiae briefs in

this matter from the Baton Rouge Bar Association, the Louisiana Municipal Association and the Louisiana Police Jury Association.

A fundamental issue to be decided is whether or not a state court can invalidate a municipal ordinance where the ordinance was enacted for purely political purposes, or whether or not a substantial governmental purpose or interest must underlie all legislative actions by municipal corporations.

Filed May 20, 1980

s/ Nenie Palmer

A True Copy May 20, 1980

Nenie Palmer

Dy. Clerk

APPENDIX C

IN THE SUPREME COURT OF THE
STATE OF LOUISIANA

RAYMOND P. SCOTT, ET AL
Appellants

v.

WOODROW W. "WOODY" DUMAS, ET AL
Appellees

No.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Raymond P. Scott, et al, the appellants above named, hereby appeal to the Supreme Court of the United States from the order entered on April 27, 1981 by the Louisiana Supreme Court denying issuance of a writ of certiorari to review the judgment of the Louisiana First Circuit Court of Appeal entered in this action on March 2, 1981.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

De BLIEUX & HURDER

s/ J. D. De BLIEUX

P. O. Box 3574
Baton Rouge, LA 70821
Phone: (504) 344-2686
Attorney for Raymond P. Scott, et al, Appellants

CERTIFICATE

I hereby certify that I have this day mailed postage prepaid a copy of the above and foregoing notice of Appeal to Frans J. Labranche, Jr., Clerk, Supreme Court of Louisiana, 301 Loyola Avenue, New Orleans, Louisiana 70112, and to Edward C. Seghers, Clerk, First Circuit Court of Appeal, State of Louisiana, 222 St. Louis Street, Baton Rouge, Louisiana 70802.

Signed at Baton Rouge, Louisiana, this 20th day of July, 1981.

s/ J. D. De BLIEUX
Attorney for Appellants

APPENDIX D-1

PARISH ORDINANCE 5475

CITY ORDINANCE 4209

CHANGING THE NAME OF EAST BOULEVARD, FROM MYRTLE STREET TO EAST WASHINGTON STREET, AND TEXAS STREET, FROM EAST WASHINGTON STREET TO EAST ROOSEVELT STREET, TO "THOMAS H. DELPIT DRIVE."

WHEREAS, a request has been made that the name of East Boulevard, from Myrtle Street to East Washington Street, and Texas Street, from East Washington Street to East Roosevelt Street, be changed to "Thomas Henry Delpit Boulevard"; and

WHEREAS, the Plannning Commission, in considering this matter, advertised and held a public hearing at which no one appeared in opposition to the proposed change; and

WHEREAS, the Planning Commission has no objection to the name change except that the name as proposed would be too long for the regulation street signs, and has recommended that it be changed to "Thomas H. Delpit Drive"; and

WHEREAS, it appears in the public interest that such change of name be effected, and these Councils concur in the recommendation of the Planning Commission:

NOW, THEREFORE, BE IT ORDAINED by the Parish Council of the Parish of East Baton Rouge and the City Council of the City of Baton Rouge:

Section 1. That the name of East Boulevard, from Myrtle Street to East Washington Street, and Texas Street, from

East Washington Street to East Roosevelt Street, within the Parish of East Baton Rouge, be changed to "Thomas H. Delpit Drive."

Section 2. That a copy of this ordinance be forwarded to the Clerk and Recorder of the Parish of East Baton Rouge for recordation in the Conveyance Records of said office.

APPENDIX D-2

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C. 20543

May 13, 1981

J. D. De Blieux, Esq.
Suite 200
200 Government Street
Post Office Box 3574
Baton Rouge, Louisiana 70821

RE: Raymond P. Scott, et al.
v. Woodrow W. "Woody" Dumas, et al.

A-921

Dear Mr. De Blieux:

Your application for stay in the above-entitled case has been presented to Justice Powell, who has endorsed thereon the following:

"Deny
LFP
5/12/81"

Very truly yours,

ALEXANDER L. STEVAS, Clerk

s/ Patricia A. Dean
Deputy Clerk

rwk
cc: Joseph F. Keogh, Esq.

APPENDIX D-3

CHAPTER 3

GOVERNING BODIES — POWERS AND DUTIES

Section 3.01. Powers of the Parish Council. The parish council of East Baton Rouge Parish shall, in addition to the powers and duties conferred or imposed by other provisions of this plan of government, have:

(a) All the powers and duties of East Baton Rouge Parish as provided in section 1.02 of this plan of government.

(b) Exclusive authority, saving the authority of the State of Louisiana, throughout the parish, including the City of Baton Rouge, with regard to the constructing, opening, widening, extending, closing, narrowing, improving, grading, paving, repaving, adorning with trees, shrubs and vines, curbing, guttering, cleaning, repairing, and maintaining of streets, highways, boulevards, parkways, bridges, alleys and other public ways, and the grading, improving, constructing and reconstructing of sidewalks, including the authority to assess the whole or part of the cost of any street, alley or sidewalk improvement on the owners of the abutting property. To that end there are hereby transferred to the parish and to the parish council as the governing body thereof, except as specifically provided in this plan of government, all the powers and duties hitherto conferred or imposed on the City of Baton Rouge by its charter or by the general laws of the state relating to the above enumerated matters, but such transfer of powers shall not be taken to diminish in any respect the power and obligation of the city, from whatever source derived, to: (1) supply street lighting; (2) regulate traffic and the parking of vehicles, including the provision of facilities for off-street parking; (3) grant franchises or permits for the use of the streets, highways, boulevards,

parkways, bridges, alleys and other public ways within the city; for pipes, poles, wire, conduits, street railway, bus lines, taxicabs and other vehicles for hire; (4) regulate the rates and conditions of service of any public utility or other person, firm or corporation holding any such franchise or permit; and (5) make charges and collect compensation for the privileges enjoyed by any such utility, person, firm or corporation.

(c) Power to construct, own, maintain and operate airports, and to provide for their management and control by the department of public works, by a separate bureau in the office of the mayor-president, or by a board or commission.